



# THE ATTORNEY GENERAL OF TEXAS

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May 11, 1971

Dr. J. W. Edgar  
Commissioner of Education  
Texas Education Agency  
201 East 11th Street  
Austin, Texas 78701

Opinion No. M-854

Re: Liability of school district  
which operates only the first  
two years of high school for  
tuition of its high school  
pupils who transfer to another  
high school district to com-  
plete their junior and senior  
year's schooling.

Dear Dr. Edgar:

In your letter requesting an opinion from this office  
you submit the following facts:

"An independent school district (Martinsville) operates a ten grade school, an accredited two-year high school district. For several years, resident scholastics therein of junior and senior grade status have been attending the adjoining Nacogdoches district high school (with a few exceptions); tuition provided for by their home district, and the Nacogdoches district designated as the receiving district for transportation purposes only.

"Next year (1971-72), the Nacogdoches district will charge a tuition rate estimated at \$172 for each of the non-resident students, grades eleven and twelve, attending its schools. There are three other accredited 12-grade school districts which adjoin Martinsville; two are closer than Nacogdoches, one is three miles farther.

". . . "

With regard to these facts you ask the following question:

"Would the resident home district (Martinsville) be legally obligated to pay the \$172 tuition rate to Nacogdoches district on above-grade children

who transfer to and attend Nacogdoches district school, should the Martinsville school board arrange or agree with one of such other school districts for their education at a lower tuition rate?"

The applicable laws of Article 2696a, Vernon's Civil Statutes, and Sections 21.067-21.072, Texas Education Code. We refrain from quoting these provisions of the law because their portions relating to your question were discussed and passed upon in Attorney General's Opinion M-649 (1970) from which we quote as follows:

"Any pupil not more than twenty-one (21) years of age who has been promoted to a high school grade not taught in his home district shall have the right to transfer to and to attend a standardized, classified, or affiliated high school either in his home county or in any other county in the state. Transfers of funds under such conditions shall be regulated by Sections 21.068-21.072 of this code."

"Sections 21.068-21.072, Texas Education Code, provide for a high school tuition fee to be paid by the sending school district to the receiving district for each pupil transferred.

". . .

"Article 2696(a) is silent regarding who pays tuition fees to receiving districts for the transfer of eligible pupils promoted to a high school grade not taught in their resident districts and who desire to transfer to a twelve-grade system. Sections 21.068-21.072 of the Code, specifically place this responsibility on the sending school district. . . ."

We have been informed that prior to the enactment of Article 2696a (effective May 9, 1969), the Texas Education Agency's policy was that the boards of local school districts had no authority to prescribe the district to which pupils whose grades are not taught in their own districts must transfer, this matter being within the discretion of the transferee. This policy was obviously based on the holding in Attorney General's Letter Opinion, Volume

382, page 941, 1938, and Attorney General's Opinion WW-1452 (1962). We quote from the holding in Attorney General's Opinion WW-1452 (1962) in part as follows:

"In Attorney General's Letter Opinions, Volume 382, p. 941 (1938) we find the following language:

". . .

". . . pupils whose grades are not taught in their home district may transfer to any high school of higher classification, under the language of this statute. It is our opinion that the local board of trustees has no authority to prescribe the district to which such pupils must transfer, this matter being within the discretion of the transferee.

"This is not to say that the county board of trustees may never exercise its discretionary power to cancel or annul transfers, but simply means that before the power can be employed, protest must be lodged by a proper school district. In absence of jurisdiction being properly invoked, the cancellation by the county board of an application for transfer is a nullity.

"Therefore, we are in full accord with your ruling of July 11, 1962.

"A school district which does not teach the high school grades has no standing . . . to cancel or annul the transfer of one of its resident scholastics to a school district which provides high school grades . . ."

Following the effective date of Article 2696a and on June 7, 1969, the Texas Education Agency adopted its Revised Policy statement relating to the transfer of pupils and mailed it to all school administrators. We quote from the pertinent provisions of this revised policy statement, Section 6.13 "Transfer of pupils", as follows:

"Any resident scholastic of a district whose grade is not taught within the district may be transferred for Foundation Program benefits at any time during the school year upon

proper application to the receiving district.

"The receiving district may charge a tuition fee not to exceed the difference between the district's actual expenditure per student in average daily attendance for the preceding school year, as determined by its board of trustees, and State aid received for that year. However, such tuition fee shall not exceed that of the preceding school year unless properly set out on the transfer application form prior to its execution by the parent or guardian or person having lawful control of such child and the receiving district.

". . .

"The resident district is responsible for the tuition fee on any transfer whose grade is not taught in the resident district and the receiving district shall notify all such resident districts in writing of the tuition, if any, to be charged."

It is our opinion based on the prior Attorney General's Opinions cited above and the policy statements of the Texas Education Agency which are in conformity with the holding of these opinions and the pertinent statutes, that a pupil who has been promoted to a high school grade not taught in his home district has a right to transfer to and attend any other accredited high school in the State under the provisions of Article 2696a, Section 1. The resident school district, which in this instance is the Martinsville School District, has the obligation to pay to the receiving district the legally imposed high school tuition fee for each pupil transferred.

This opinion does not consider any matter relating to the transportation of these transfer pupils.

#### S U M M A R Y

A pupil who has been promoted to a high school grade not taught in his home district has a right to transfer to and attend any other accredited high school in the State under the provisions of Article

2696a, Section 1, and the resident school district, which in this instance is the Martinsville School District, has the obligation to pay to the receiving district the legally imposed high school tuition fee for each pupil transferred.

Yours very truly,



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